



of Georgia, Atlanta Division, as the parcel of real property at issue in this case is located in Cobb County, Georgia.

### **PARTIES**

3. Plaintiff K. SCOTT STOKES (hereinafter “Plaintiff”) is, and has been at all times relevant to the instant matter, a natural person residing in Roswell, Georgia (Fulton County).

4. Plaintiff is a quadriplegic and is disabled as defined by the ADA.

5. Plaintiff is required to traverse in a wheelchair and is substantially limited in performing one or more major life activities, including but not limited to: walking, standing, grabbing, grasping and pinching.

6. Plaintiff cannot walk and uses a wheelchair for mobility purposes.

7. Defendant SHIVSAINATH, LLC (hereinafter “Defendant”) is a Georgia limited liability company that transacts business in the state of Georgia and within this judicial district.

8. Defendant may be properly served with process via its registered agent for service, to wit: William C. Bushnell, 297 Prince Avenue, Suite 24, Athens, Georgia 30601.

### **FACTUAL ALLEGATIONS**

9. On or about February 27, 2021, Plaintiff was a customer at “Mazzy's

Sports Bar & Grill,” a business located at 2217 Roswell Road, Suite A200, Marietta, Georgia 30062.

10. Defendant is the owner or co-owner of the real property and improvements that are the subject of this action. (The structures and improvements situated upon said real property shall be referenced herein as the “Facility,” and said real property shall be referenced herein as the “Property”).

11. Plaintiff lives approximately thirteen (13) miles from the Facility and Property.

12. Plaintiff’s access to the businesses located at 2217 Roswell Road, Marietta, Georgia 30062 (Cobb County Property Appraiser’s parcel number 16102900260), and/or full and equal enjoyment of the goods, services, foods, drinks, facilities, privileges, advantages and/or accommodations offered therein were denied and/or limited because of his disabilities, and he will be denied and/or limited in the future unless and until Defendant is compelled to remove the physical barriers to access and correct the ADA violations that exist at the Facility and Property, including those set forth in this Complaint.

13. Plaintiff has visited the Facility and Property at least once before and intends on revisiting the Facility and Property once the Facility and Property are made accessible.

14. Plaintiff intends to revisit the Facility and Property to purchase goods and/or services.

15. Plaintiff travelled to the Facility and Property as a customer and as an advocate for the disabled, encountered the barriers to his access of the Facility and Property that are detailed in this Complaint, engaged those barriers, suffered legal harm and legal injury, and will continue to suffer such harm and injury as a result of the illegal barriers to access present at the Facility and Property.

**COUNT I**  
**VIOLATIONS OF THE ADA AND ADAAG**

16. On July 26, 1990, Congress enacted the Americans with Disabilities Act 42 U.S.C. § 12101 *et seq.* (the “ADA”).

17. The ADA provided places of public accommodation one and a half years from its enactment to implement its requirements.

18. The effective date of Title III of the ADA was January 26, 1992 (or January 26, 1993 (if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181; 28 C.F.R. § 36.508(a).

19. The Facility is a public accommodation and service establishment.

20. The Property is a public accommodation and service establishment.

21. Pursuant to the mandates of 42 U.S.C. § 12134(a), on July 26, 1991, the Department of Justice and Office of Attorney General promulgated federal

regulations to implement the requirements of the ADA. 28 C.F.R. Part 36.

22. Public accommodations were required to conform to these regulations by January 26, 1992 (or by January 26, 1993 if a defendant has 10 or fewer employees and gross receipts of \$500,000 or less). 42 U.S.C. § 12181 *et seq.*; 28 C.F.R. § 36.508(a).

23. Liability for violations under Title III or the ADA falls on “any person who owns, leases (or leases to), or operates a place of public accommodation.” 42 U.S.C. § 12182(a).

24. The Facility must be, but is not, in compliance with the ADA and ADAAG.

25. The Property must be, but is not, in compliance with the ADA and ADAAG.

26. Plaintiff has attempted to, and has to the extent possible, accessed the Facility and the Property in his capacity as a customer of the Facility and Property, and as an advocate for the disabled, but could not fully do so because of his disabilities resulting from the physical barriers to access, dangerous conditions and ADA violations that exist at the Facility and Property that preclude and/or limit his access to the Facility and Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers,

conditions and ADA violations more specifically set forth in this Complaint.

27. Plaintiff intends to visit the Facility and Property again in the future as a customer and as an advocate for the disabled in order to utilize all of the goods, services, facilities, privileges, advantages and/or accommodations commonly offered at the Facility and Property, but will be unable to fully do so because of his disability and the physical barriers to access, dangerous conditions and ADA violations that exist at the Facility and Property that preclude and/or limit his access to the Facility and Property and/or the goods, services, facilities, privileges, advantages and/or accommodations offered therein, including those barriers, conditions and ADA violations more specifically set forth in this Complaint.

28. Defendant has discriminated against Plaintiff (and others with disabilities) by denying his access to, and full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of the Facility and Property, as prohibited by, and by failing to remove architectural barriers as required by, 42 U.S.C. § 12182(b)(2)(A)(iv).

29. Defendant will continue to discriminate against Plaintiff and others with disabilities unless and until Defendant is compelled to remove all physical barriers that exist at the Facility and Property, including those specifically set forth herein, and make the Facility and Property accessible to and usable by

Plaintiff and other persons with disabilities.

30. A specific list of unlawful physical barriers, dangerous conditions and ADA violations which Plaintiff experienced and/or observed that precluded and/or limited Plaintiff's access to the Facility and Property and the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the Facility and Property include, but are not limited to:

**(a) EXTERIOR ELEMENTS:**

- (i) Accessible parking spaces are not properly located or distributed on the Property, in violation of section 208.3 of the 2010 ADAAG standards. Specifically, the upper level of the Property does not have one disabled accessible parking space per twenty-five parking spaces.
- (ii) The two accessible parking spaces on the Property most proximate to the entrance of the Mazzy's portion of the Facility are missing proper identification signage, in violation of section 502.6 of the 2010 ADAAG standards.
- (iii) The two accessible parking spaces on the Property most proximate to the entrance of the Mazzy's portion of the Facility each have a slope in excess of 1:48 (one to forty-eight), in

violation of section 502.4 of the 2010 ADAAG standards.

- (iv) There is an excessive vertical rise on the accessible route on the Property that leads to the entrance of the Mazzy's portion of the Facility, in violation of section 403.2 of the 2010 ADAAG standards.
- (v) The ground surface within the required maneuvering clearance at the entrance of the Mazzy's portion of the Facility is not level, in violation of section 404.2.4.4 of the 2010 ADAAG standards.
- (vi) The signage for the accessible parking space on the Property across the vehicular way from Suite 104 of the Facility is not installed at a permissible height, in violation of section 502.6 of the 2010 ADAAG standards. This accessible parking also does not have an adjacent access aisle, in violation of section 502.3 of the 2010 ADAAG standards.
- (vii) The signage for the accessible parking space on the Property across the vehicular way from Suite 108 of the Facility is not installed at a permissible height, in violation of section 502.6 of the 2010 ADAAG standards. This accessible parking also does



not have an adjacent access aisle, in violation of section 502.3 of the 2010 ADAAG standards.

- (viii) The signs for two of the three accessible parking spaces on the Property across the vehicular way from Suite 140 of the Facility are not installed at a permissible height, in violation of section 502.6 of the 2010 ADAAG standards. One of these three spaces has no signage, also in violation of section 502.6 of the 2010 ADAAG standards.
- (ix) None of the three accessible parking spaces on the Property across the vehicular way from Suite 140 of the Facility have an adjacent access aisle, in violation of section 502.3 of the 2010 ADAAG standards.
- (x) One of the three accessible parking spaces on the Property across the vehicular way from Suite 140 of the Facility has a cross-slope in excess of 1:48 (one to forty-eight), in violation of section 502.4 of the 2010 ADAAG standards.
- (xi) The lower level of the Property has multiple accessible ramps with running slopes exceeding 1:10 (one to ten), in violation of section 405.2 of the 2010 ADAAG standards.

(xii) The lower level of the Property has multiple accessible ramps with excessive vertical rises at their base and landing, in violation of section 405.7 of the 2010 ADAAG standards.

(i) Multiple portions of the accessible route on the lower level of the Property have a running slope in excess of 1:20 (one to twenty), in violation of section 403.3 of the 2010 ADAAG standards. These areas also have total vertical rises greater than 6" (six inches), but do not have handrails complying with section 505 of the 2010 ADAAG standards, in violation of section 405.8 of the 2010 ADAAG standards.

**(b) INTERIOR ELEMENTS:**

(i) The interior of the Mazzy's portion of the Facility has a bar lacking any portion of which that has a maximum height of 34" (thirty-four inches) from the finished floor, in violation of section 902.3 of the 2010 ADAAG standards.

(ii) There is no seating within reasonable proximity to the above-described bar offering dining surfaces provided for consumption of food or drink which complies with section 902.2 of the 2010 ADAAG standards, requiring appropriate

knee and toe clearance complying with section 306 of the 2010 ADAAG standards, positioned for a forward approach, in violation of section 226.1 of the 2010 ADAAG standards.

- (iii) The Mazzy's portion of the Facility lacks restrooms signage that complies with sections 216.8 and 703 of the 2010 ADAAG standards.
- (iv) The hand operated flush control on the commode in the accessible toilet stall in the restroom in the Mazzy's portion of the Facility is not located on the open side of the accessible stall, in violation of section 604.6 of the 2010 ADAAG standards.
- (v) There are no rear grab bars adjacent to the commode in the restroom in the Mazzy's portion of the Facility, in violation of section 604.5 of the 2010 ADAAG standards.
- (vi) The toilet paper dispenser in the restroom in the Mazzy's portion of the Facility is positioned outside the permissible reach ranges set forth in section 604.7 of the 2010 ADAAG standards.
- (vii) The centerline of the commode in the accessible toilet stall in

the restroom in the in the Mazzy's portion of the Facility is positioned more than 18" (eighteen inches) from the sidewall, in violation of section 604.2 of the 2010 ADAAG standards.

(viii) The accessible toilet stall door in the restroom in the in the Mazzy's portion of the Facility is not self-closing, in violation of section 604.8.2.2 of the 2010 ADAAG standards.

(ix) The height of the coat hook located in the toilet stall in the restroom in the in the Mazzy's portion of the Facility are above 48" (forty-eight inches) from the finished floor, in violation of section 308.2.1 of the 2010 ADAAG standards.

31. Without limitation, the above-described violations of the ADAAG made it more difficult for Plaintiff to find and utilize a disabled accessible parking space, more difficult for Plaintiff to exit and re-enter his vehicle, more difficult for Plaintiff to travel upon the accessible routes on the Property and more difficult for Plaintiff to utilize all features of the restroom in in the Mazzy's portion of the Facility.

32. The violations enumerated above may not be a complete list of the barriers, conditions or violations encountered by Plaintiff and/or which exist at the Facility and Property.

33. Plaintiff requires an inspection of Facility and Property in order to determine all of the discriminatory conditions present at the Facility and Property in violation of the ADA.

34. The removal of the physical barriers, dangerous conditions and ADA violations alleged herein is readily achievable and can be accomplished and carried out without significant difficulty or expense. 42 U.S.C. § 12182(b)(2)(A)(iv); 42 U.S.C. § 12181(9); 28 C.F.R. § 36.304.

35. All of the violations alleged herein are readily achievable to modify to bring the Facility and Property into compliance with the ADA.

36. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Facility and Property is readily achievable because the nature and cost of the modifications are relatively low.

37. Upon information and good faith belief, the removal of the physical barriers and dangerous conditions present at the Facility and Property is readily achievable because Defendant has the financial resources to make the necessary modifications.

38. In instances where the 2010 ADAAG standards do not apply, the 1991 ADAAG standards apply, and all of the alleged violations set forth herein can be modified to comply with the 1991 ADAAG standards.

39. Plaintiff is without adequate remedy at law, is suffering irreparable harm, and reasonably anticipates that he will continue to suffer irreparable harm unless and until Defendant is required to remove the physical barriers, dangerous conditions and ADA violations that exist at the Facility and Property, including those alleged herein.

40. Plaintiff's requested relief serves the public interest.

41. The benefit to Plaintiff and the public of the relief outweighs any resulting detriment to Defendant.

42. Plaintiff's counsel is entitled to recover its reasonable attorney's fees and costs of litigation from Defendant pursuant to 42 U.S.C. §§ 12188 and 12205.

43. Pursuant to 42 U.S.C. § 12188(a), this Court is provided authority to grant injunctive relief to Plaintiff, including the issuance of an Order directing Defendant to modify the Facility and Property to the extent required by the ADA.

WHEREFORE, Plaintiff prays as follows:

- (a) That the Court find Defendant in violation of the ADA and ADAAG;
- (b) That the Court issue a permanent injunction enjoining Defendant from continuing its discriminatory practices;
- (c) That the Court issue an Order requiring Defendant to (i) remove the physical barriers to access and (ii) alter the subject Facility and

Property to make them readily accessible to, and useable by, individuals with disabilities to the extent required by the ADA;

- (d) That the Court award Plaintiff's counsel reasonable attorneys' fees, litigation expenses and costs; and
- (e) That the Court grant such further relief as deemed just and equitable in light of the circumstances.

Dated: March 12, 2021.

Respectfully submitted,

/s/Craig J. Ehrlich

Craig J. Ehrlich

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1**

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/Craig J. Ehrlich

Craig J. Ehrlich